

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA; STATES OF CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, FLORIDA, GEORGIA, HAWAII, ILLINOIS, INDIANA, IOWA, LOUISIANA, MICHIGAN, MINNESOTA, MONTANA, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, OKLAHOMA, RHODE ISLAND, TENNESSEE, TEXAS, VERMONT, AND WASHINGTON; THE COMMONWEALTHS OF MASSACHUSETTS AND VIRGINIA; AND THE DISTRICT OF COLUMBIA,

*ex rel.* ZACHARY SILBERSHER,

*Plaintiffs,*

v.

JANSSEN BIOTECH, INC., JANSSEN ONCOLOGY, INC., JANSSEN RESEARCH & DEVELOPMENT, LLC, JOHNSON & JOHNSON, and BTG INTERNATIONAL LIMITED,

*Defendants.*

Civil Action No.: 19-12107 (KM)(JBC)

Motion Return Date: TBD

Oral Argument Requested

*Document electronically filed*

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**PLAINTIFF-RELATOR ZACHARY SILBERSHER'S RESPONSE TO  
DEFENDANTS' REQUEST FOR JUDICIAL NOTICE (DKT. 128-4)**

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Plaintiff-Relator Zachary Silbersher (“Relator”) does not oppose Defendants’ request to take judicial notice of the documents referenced as Exhibits A through TT (Dkts. 128-5, 128-6, 128-7) in Defendants’ Request for Judicial Notice (Dkt. 128-4) for the limited purpose of establishing those documents existed in the places cited by Defendants at the times indicated.

*U.S. ex rel. Spay v. CVS Caremark Corp.*, 913 F. Supp. 2d 125, 139–40 (E.D. Pa. 2012), *citing Benak ex rel. Alliance Premier Growth Fund v. Alliance Capital Mgmt., L.P.*, 435 F.3d 396, 401 n. 15 (3d Cir. 2006).

The Court, however, need not take judicial notice of documents that are “not helpful in deciding the current motions.” *United States ex rel. Integra Med Analytics LLC v. Providence Health & Servs.*, 2019 WL 3282619, at \*4 (C.D. Cal. July 16, 2019) (determining whether documents that purportedly established “public disclosure” were disclosed in an enumerated forum under the False Claims Act, 31 U.S.C. § 3730(e)(4)(A)(i)-(iii)), *rev’d on other grounds* 2021 WL 1233378 (9th Cir. Mar. 31, 2021).

*Inter partes* review proceedings (“IPRs”) and patent prosecutions fall squarely within an *excluded* public forum under § 3730(e)(4)(A)(i), because they are administrative proceedings in which the government is not a party. Information disclosed in such proceedings therefore cannot be used by defendants to raise a public disclosure bar. Moreover, scientific studies, legal reporters, scholarly journals, government websites, and competitor websites are neither “Federal reports” nor “news media” under § 3730(e)(4)(A)(ii), (iii). *See generally* Plaintiff-Relator’s Opposition to Defendants’ Motion to Dismiss, at § I.

The Court therefore need not take judicial notice of Exhibits A-P, S, V, Z, DD-HH, KK, and OO-TT, because they would “not [be] helpful” in resolving any public disclosure issues. *Integra*, 2019 WL 328261, at \*4.

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Dated: May 20, 2021

/s/ Bruce D. Greenberg

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